Supreme Court, U. S.
FILED
FEB 13 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-811

CLAIBORNE HARDWARE CO., ET AL.,
Petitioners,

versus

AARON HENRY, ET AL., UNITED STATES OF AMERICA, and MISSISSIPPI ACTION FOR PROGRESS,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITIONERS' REPLY MEMORANDUM

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Aaron Henry, et al., in their opposing brief in No. 79-811, stated, "Petitioners allege no conflict among the circuits . . . ." (Br. in Opp., pp. 5-6). Petitioners invite the Court's attention to cases cited in their petition,

footnote 3, p. 11, and in particular the authorities cited from the Sixth Circuit. Upon review, these cases will reflect a split with other circuits on the applicability of the abstention doctrine of *Younger v. Harris*, 401 U.S. 37 (1971) to civil cases.

The United States, in its opposing brief in No. 79-811, rewrites the facts of this case, contrary to the findings of the state trial court after an eight month trial in which over 140 witnesses testified. This is evident from the following:

TRIAL COURT'S HOLDING:*	THE GOVERNMENT'S REVISION:
[1] "The overwhelming majority of . . . defendants . . . stated unequivocally that they had *no* dispute with any merchant." (Emphasis added) (App.[1] p. 165)	[1] "[A] group of black citizens . . . organized a boycott of white businesses . . . to protest racial discrimination by the merchants . . . ." (Br. in Opp. p. 3)

* From Final Decree, which incorporated its opinion.

1 Appendix to 76-4200, *Henry, et al. v. First Nat'l. Bank of Clarksdale, et al.* (Claiborne Hardware, et al.) reported at 595 F.2d 291 (5th Cir. 1979).

[2] "The thread of fear and violence is woven throughout this case. [The boycott was enforced by] fear . . . shootings . . . threats . . . harassment . . . beat[ings] . . . physical harm . . . villification and ostracism." (App. pp. 167-170)	[2] "[D]uring [the boycott] . . . occasional threats and violence occurred." (Br. in Opp. p. 3)
[3] "The funds attached . . . are declared to be the funds of the *nonresident* NAACP." (Emphasis added) (App. p. 210)	[3] "The attached funds were owned by the [*resident*] branches of the NAACP . . . ." (Emphasis added) (Br. in Opp. p. 4)

In addition, the United States argues that, "[T]he district court granted . . . injunctive relief only *after* respondents had exhausted their state remedies for a stay . . . pending appeal." (Emphasis added) (Br. in Opp. pp. 15-16). In fact, *before* the Mississippi Supreme Court ruled on Respondents' Petition for Stay (App. p. 228) their attorneys announced to the court that the federal district court had already granted a temporary restraining order.

These transparent revisions reflect respondents consistent reluctance to accept the findings of fact by the *only* court which has heard them. In light of the inability of respondents to face the issues presented in the petition without grossly distorting the facts, the need for plenary review of the action below is indisputable; indeed, petitioners suggest that summary reversal is now in order.

Respectfully submitted,

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